

Chapter 55 - Gear Restrictions

55.90 Menhaden Pilot Program

1. Areas

A. Bald Head Cliff to Cape Arundel

Shoreward and westerly of a straight line starting at the easternmost point of Bald Head Cliff, Ogunquit to the southernmost point of Cape Arundel, Kennebunkport.

B. Biddeford Pool to Cape Elizabeth

Shoreward and westerly of the territorial sea line, as identified on National Oceanic and Atmospheric Administration nautical chart 13286, starting at the easternmost point of Biddeford Pool, Biddeford following the territorial sea line to where the line intersects the southernmost point of land in Cape Elizabeth.

C. Cape Elizabeth to Small Point

Shoreward and northerly of the (irregular, not straight) "COLREGS DEMARCATION LINE" as identified on National Oceanic and Atmospheric Administration nautical chart 13290, starting at Portland Head Light, Cape Elizabeth following the COLREGS line to Bald Head, Cape Small, Phippsburg.

2. Area Limitations

The areas in Chapter 55.90(1)(A, B & C) are restricted to the take, possession and transport of the Atlantic menhaden in accordance with the following regulations:

A. Limitations in Area C

(1) Carrier Vessel Daily Limit - It shall be unlawful for carrier vessels to possess greater than 250,000 pounds (lb) of menhaden per day.

For purposes of this section (Chapter 55.90) "daily catch" means a maximum of 250,000 lbs of menhaden possessed or loaded aboard from these areas between 00:01 AM to 11:59 PM.

B. Limitations in Areas A & B

(1) Harvester and Carrier Vessel Daily Catch Limit - It shall be unlawful for harvester vessels and carrier vessels to catch and possess greater than 250,000 lbs of menhaden per day.

C. Limitations in all Areas A, B & C

(1) It shall be unlawful for any harvester vessel that exceeds 50 feet in length overall to fish for, take or possess menhaden within these restricted areas.

(2) Any carrier vessel greater than 70 feet in length overall transporting menhaden harvested from these areas must be measured, plainly marked at a maximum 250,000 lb capacity, and sealed by the State Sealer of Weights and Measures. This documentation must be obtained prior to transporting menhaden taken from these areas.

(3) Carrier vessels may load menhaden on two consecutive days before off loading provided that the Maine Marine Patrol, Division I Office (telephone (207) 633-9596) is contacted prior to loading the second day's daily catch.

Any vessel opting to load on two consecutive days must have the holds measured to indicate both maximum 250,000 and 500,000 lb capacities, plainly marked at each capacity, and sealed by the State Sealer of Weights and Measures. This documentation must be obtained prior to transporting menhaden taken from these areas.

3. Suspension of rules

The Commissioner has the authority to suspend all regulations in Chapter 55.90 in the event of a potential fish kill upon consultation with industry and Marine Patrol. Notice of rule suspension and duration shall be provided via the internet on the Department's web site and by email to industry members or telephone.

4. This regulation expires June 1, 2010.

Basis Statement

Chapter 55.90 Menhaden Pilot Program

A pilot project has been adopted that would limit the take and possession of Atlantic menhaden in three areas in Southern Maine. The largest area is shoreward from Cape Elizabeth to Small Point; and two smaller areas are shoreward from Bald Head Cliff to Cape Arundel and Biddeford Pool to Cape Elizabeth. In all areas menhaden harvester vessels will be limited to 50 feet; carrier vessels greater than 70 feet must have their holds measured, marked at a maximum 250,000 lb capacity and sealed; in the two smaller areas the daily catch limit will be 250,000 lb per harvester and carrier vessels; and in the larger area the daily catch limit will be 250,000 lb per carrier vessels only. This rule will sunset June 1, 2010 and the Commissioner has the authority to waive all of these rules in the event of a potential fish kill.

The three proposed restricted areas are recognized as very active sport fishing territory in southern Maine where charter boats, recreational fishermen and tide water guides fish striped bass seasonally. Since the striped bass forage on menhaden the recreational sector has requested leaving 25-30% of the menhaden in these areas due to their importance to their industry. The regulations will restrict the amount of menhaden take on a daily basis by purse seiners in the bait industry; and place effort restrictions on the vessel sizes to impact efficiency, thereby controlling effort. Smaller seiners can access all of these areas however since they are not as efficient as the larger vessels the limitations will reduce effort and therefore leave some of the menhaden resource behind.

The objectives and potential rules were discussed at a meeting held April 29, 2009 attended by purse seiners, charter boat captains and representatives of Maine's Coastal Conservation Association.

A non-substantive change would be made to section (2)(C)(2 & 3) that would remove the text referencing the effective date of the rulemaking. This would clarify the intent for the carrier vessels that require documentation for being measured and sealed must have this done prior to the activity of transporting menhaden taken from the restricted areas, not before the effective date of the regulation.

Summary of Comments

Public hearings were held in Scarborough and Yarmouth June 16 and 18, 2009 respectively. Overall all persons who commented were in support of the proposed pilot program. In Scarborough Mr. McCullock spoke extensively on the protection of the forage fish or fish that serve as food for the larger species and was supportive of the proposed rules. During the hearing in Yarmouth Lt. Cornish discussed several questions and scenarios to clarify the proposed rules, which are summarized below. The Yarmouth hearing attendees agreed that their questions could be summarized overall for the record and otherwise supported the proposed rules.

Scarborough Hearing attendees:

Doug Jowett, Brunswick

Sue Jowett, Brunswick

Dick Anderson, representing CCA Maine

Michael A. McCullock, Saco

DMR: Lt. Cornish, L. Churchill

Yarmouth Hearing attendees:

Doug Jowett, Brunswick

Brian Tarbox, North Yarmouth

Mark Bichrest, Harpswell

Jennie Bichrest, Topsham

DMR: **Lt. Cornish**, L. Churchill

Written comments:

Jennie Bichrest, Topsham

The Maine Association of Charterboat Captains, Dave Pecci, President

Suggestion and questions:

- Remove the requirement to obtain **documentation of capacity by the effective date** of the rule. Instead, obtain prior to transporting fish.

***Response:** The Department concurs that removing this section of text would clarify the rule as the intent was to have the carrier vessels that require documentation and be sealed must have this done prior to the activity of transporting menhaden taken from the restricted areas. See change to regulation in Chapter 55.90(2)(C)(2).*

- Could we have **big boats lay in the anchorage** so we could unload to them [inside the restricted area] rather than at Half Way Rock?

Response: *Provided that the 'carrier vessel' calls Marine Patrol and we know their benchmark for the first day then the following day they could load more fish up to the 250,000 lb maximum per day, or they could have less. Also, the carrier vessel could stay in anchorage while waiting for a harvester vessel to purse fish. It would be better for the carrier vessel to not to be moving around to not create gear conflict.*

- Could you have larger carrier vessels either on the anchorage **inside the (Casco Bay) restricted area or outside** that wouldn't have to be measured and sealed because they wouldn't be chasing the smaller [seiner] boats around?

Response: *As written, the restriction for the Casco Bay area is any carrier that takes [loads] fish out of that area and is over 70 feet must be measured and sealed; (section (2)(C)), any carrier vessel greater than 70 feet in length overall transporting menhaden harvested from these areas must be measured. That is the way it was designed. The only real restriction on Casco Bay is the amount that each carrier can take. If you eliminate that there is no restriction for that area.*

The original idea was to restrict effort to some degree so that if you bring a big carrier up and load it with several trips of 250,000 lb a day that defeats the purpose of the regulation. It was thought that industry wouldn't be as apt to happen to bring 4-5 carriers up to take 250,000 lb out and not to have one carrier taking 750,000 lb [daily].

- **What about offloading to a secondary carrier outside the Casco Bay restricted area?**

Response:

If you take fish out of the restricted area as a harvester boat, where ever that carrier is located that primary carrier must be measured and sealed and is limited to 250,000 lb, daily taken out of the restricted area(s).

If the carrier vessel is on the other side of Small Point, outside the Casco Bay restricted area, and you're loading fish to a primary carrier vessel, as long as that carrier is only taking 250,000 lb per day out of the restricted area it is ok. If the carrier takes 250,000 lb from you and another carrier takes 250,000 from the guy right next to you, also taken from the restricted area, both of you can't put 250,000 lb onto one carrier, the same primary carrier, during one day.

If there is a secondary carrier positioned outside the restricted Casco Bay area, Ch. 55.90(1)(C), it will be considered the same as a shoreside dealer/facility. For example, multiple primary carriers (those greater than 70 feet that must be measured and sealed) would be allowed to offload to a secondary carrier outside the restricted Casco Bay area. The secondary carrier would not be required to be measured and sealed, nor restricted to the 250,000 lb limit, and must hold a wholesale dealer license identical to a shoreside dealer/facility.

If the menhaden being loaded have not been taken from inside the restricted areas a primary or secondary carrier vessel would not have to be measured and sealed.

- Could I load 250,000 lb off my boat then the next day load another 250,000 lb to a carrier vessel and once they've received 500,000 lb **they have to leave?**

Response: *As long as the carrier vessel was measured and sealed and it didn't have more than 250,000 lb loaded on it in a given day; and provided they call Marine Patrol.*

- Once they're loaded with 500,000 lbs they have to pull out of here and **go unload someplace after that, right?**

Response: *Correct, after the carrier vessel loads their maximum amount, 250,000 lb per day or two days and a maximum of 500,000 lb they have to go.*

- What's to stop them from **loading a third day if the fish come from outside** of these areas, maybe on their way home Downeast?

Response: *There's nothing to stop them from doing that.*

- **What if** they're at 450,000, after the 2 day period could they lay over for a day to put that extra 50,000 on?

Response: *The fish must come from another area, not from the restricted area(s). Going beyond 2 days it almost becomes an enforcement nightmare. If one boat is out there for 5 days to get their limit; somebody else is out there for 2 days and someone else is out there for 9 days, you have to draw the line somewhere. Right now it is at 2 days. This is a pilot program with the intention to see how well this works and if we needed would address this later.*

Written comments:

Jennie Bichrest, Topsham

Remove the requirement to obtain documentation of capacity by the effective date of the rule. Instead, obtain prior to transporting fish.

The Maine Association of Charterboat Captains, Dave Pecci, President

The Maine Association of Charterboat Captains supports the proposed rules establishing the Menhaden Pilot Program as written. We applaud the Dept's effort to work with recreational and commercial stakeholders to address conflicts within Maine Menhaden fishery. We see this Pilot Program as a major step forward.

Individual summarized comments:

Doug Jowett, Brunswick

All for it, in support.

Dick Anderson, representing CCA Maine

100% in support of the proposal.

Michael A. McCulloch, Saco

In support of the proposed restrictions.

I own a private pleasure boat out of Saco, Maine. I was born in Staten Island, NY. I've fished all my life since I was a child. I saw what happened in the 80's to all the haddock and cod. How the oceans were raped by the draggers. I saw that at one time you could catch a lot of fish as a personal recreational person. Then in the 80's all of a sudden you were lucky to catch one and you had to throw it back because it wasn't the right size. We need laws and regulations to prevent and to give equal opportunity to the private citizen. One of my main complaints is in the last several years I've fished Jeffery's Ledge, Jeffery's Fingers, and I go out sometimes twice a week out there. Especially in the first of the season in April I start fishing. It is a hit and miss thing like, that is why they call it fishing, you either do well or you do good. But usually you pick up some fish or you pick up a lot of fish. This season I picked up my first trip a few cod fish, and a couple of haddock in the 5-6 lb range. They had no food in them, no herring what so ever, had nothing. Their stomachs were empty. All the fish were not feeding on the bottom like they usually do they were very high off the bottom. I don't know why. That was for 3-4 weeks like that. Then all of a sudden after about 3 weeks the whales started showing up because and all of a sudden I noticed a lot of herring out there. There was a bunch of them. The whales were having a feast. I was catching fish. When I cleaned my fish, my haddock and my cod that were legal size, 18 inches for the haddock, and I noticed that they were bigger. They were up to 8 lbs, which made me very excited because I hadn't seen that in many years. The cod weren't that big out there. They were few and far in between the 24 inch legal size but there was cod. We'd fish all day and maybe keep two keeper cod. That was about it. The year before there were many keeper cod caught out there. This year there aren't. I went out there this previous Saturday, today I believe it's the 16th so I went out there on the 14th(?) on a Saturday, and I saw the *Providian* out there. Apparently it was working the herring and there was no more big schools of herring out there. I was catching fish and they had no food in them. I was catching much, much less of fish than I'd previously caught. And I had some really good spots out there and the fish just weren't there because there was no food for them. There wasn't that many whales either. I saw two baby whales I didn't see any big whales. Usually you get the bigger ones, they eat a lot more than the little ones. So the baby whales were hanging around because they were picking up remnants. Sometimes I even catch a herring on a teaser when I'm jigging. I did not, I haven't done that this season, and they haven't come over and picked up the teaser, the little hook underneath, on top of the cod jig. That hasn't happened because there is no herring out there anymore. They are taking the food away from the fish. They have some really good laws out there to protect the fish, certain sizes, that protect and supposedly allow the

fish to reproduce because they do it at a certain size, a certain age, and when they are a certain length usually they are that age, and we put them back if they are undersize. That has to do with the cod and the haddock. That is great but you can have all the laws in the world but if you don't have a law that protects the food that the fish eat that are supposed to make a come back then those laws don't mean anything. They are no good to the fish and no good to the fishery. I think I'm not the only one who would express this same opinion. Another instance is take last year, I was fishing out on Tantas, which is 12 miles off the coast of Saco, Maine. And the fish, cod and haddock, twice I caught out there, I couldn't put my line down, and I was using bait or a jig and I would catch fish as quick as I could put it down. Then all of a sudden I noticed the *Providian* out there on the edges. I noticed other boats working the edges and all of a sudden the fish were gone. There was no more codfish, no more haddock to be caught there. That hasn't been that way for years. Soon as the fish, soon as the herring started showing up at Tantas, 12 miles off Saco, then so didn't the herring boats. Soon as the herring boats showed up there was no more fish for us to catch, they took care of that and they say they just want to earn a living. Well they do more than earn a living. They are taking away my right as a private citizen to be able to catch fish; and my friends. We don't like it. I'm very much in support of the restrictions. I believe a man should be able to, should never stop a man from doing his work but I believe that the fishery, the people that have fished it for years have abused it. They continue to abuse it and they cry out "Well we have to make a living". Well they've made their living. Who can afford a 115 foot boat like the *Providian* if they weren't making money? That is more than a living. There used to be captains of commercial boats who owned several boats, now they don't any more. And they were raping the oceans. They're still doing it. I don't understand how anybody can allow a boat to go out to Jeffery's when no other commercial is allowed out there. Any boat, a herring boat is allowed out there to take all the herring out of that area so the fish can't eat. How are they supposed to survive? Let me take the food off the table of the people of the fishermen from their families and see if they live. They wouldn't they would starve to death. That is what is happening to the fish. They are starving to death because these people are taking the food away from the fish that they need to survive. It is not fair that they get away with special privileges it seems to allow them to fish out there when no body else can that owns a commercial license. Thank-you for hearing me.

Lt. Cornish, informational announcement at Yarmouth:

Next year, we said we would meet again on this in January or February. Earlier than we did this year because this contains a proposed sunset of June 1st, 2010 and there was some concern to not wait to late to meet on any regulations that would either be more strict or goes away it wouldn't give us time to implement. We would probably meet in Wiscasset to talk about it again.

Mark Bichrest, Harpswell [summarized and shortened with permission]

The two things that Robbie said; the 2 day restriction is good to keep folks from dumping a lot of fish. [If] you get a big set, over 20,000, you're going to get your 200,000 2-3 times. Then if we could do something about carriers in the anchorage. So we could have big boats lay in the anchorage so we could unload to them rather than Half Way Rock (HWR).

If you're going to have bigger boats it would stop a lot of over catching. They wouldn't have to be sealed because they wouldn't be chasing the boats around. There would be no limit on what that boat could take, they could just lay in the anchorage like the *Regga* did but anyone that fishes for them has got to [be measured and sealed]....if you go outside the restricted area they would just follow you and load up out of your seine. And this is just working in this restricted area.... There's a difference if he's laying on an anchorage or chasing a seiner around.

There's a difference if he's laying on an anchorage or chasing a seiner around. It is just a loading point. [If it was] a fish meal [plant] on shore, there is no limit to how many trips I can take to the fish meal plant. Or if he didn't chase the seiner around at all, say he didn't get 500,000 lb off the boat, just offloading to me. But, ...I see... if they aren't chasing you around, it is just the carrier.

What about offloading to one [a carrier] outside the area?

I could load 250,000 lb, say if there is a boat laying there, and I wanted to take 250,000 off my boat to them, then the next day take another 250,000 lb to them and once they've received 500,000 lb?

I think if you're going to have it I think it should be Casco Bay and this whole area, it should be just one anchorage. That would be so much easier to enforce.

The 250 per day up to 500,000 lb would be reasonable; you don't want to get too carried away.

Doug Jowett, Brunswick

I'm in favor of the proposal as written. I don't see any problems with the inside anchorage. Loading of carrier vessel up to its maximum limit, in two days, of half a million lbs.

[Once] they're sealed with a [1/2] million lbs they have to pull out of here and go unload someplace after that, right? ...What's to stop them from loading a third day if the fish come from outside of these areas, maybe on their way home Downeast.

For what ever reason say they're at 450,000, say they couldn't max out for the 2 day period. Is there anything in here that allows them to lay over for a day to put that extra 50,000 on? They're allowed that but like carrying over a quota for a day...they motored all the way here to load up and for whatever they are short 50 or 80,000 lb...